



## UNITED STATES PATENT AND TRADEMARK OFFICE

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OCT 17 2006

OFFICE OF PETITIONS

In re Application of :  
Czech, et al. : DECISION ON PETITION  
Application No. 09/852,122 :  
Filed: May 8, 2001 :  
Atty. Dkt. No.: Micronas.6158 :

This decision is in response to the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed September 18, 2006.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

This application became abandoned August 22, 2006 for failure to timely submit a proper reply to the final Office action mailed February 21, 2006. The final Office action set a three month shortened statutory period of time for reply. An extension of time and a reply to the final Office action were submitted August 18, 2006. However, the reply failed to place the application in condition for allowance, as indicated in the Advisory Action mailed August 29, 2006. Notice of Abandonment was mailed September 18, 2006.

Petitioners argue that the response to the final Office action submitted August 18, 2006 should have been considered a request for continued examination (RCE) under 37 CFR 1.114 because the response included an authorization to charge "any further extension and/or fee" to practitioner's deposit account.

Petitioners' arguments have been considered, but are not found convincing. An RCE must be made by request and authorization to charge fees cannot be deemed a constructive request for an RCE.

Failure to properly reply under 37 CFR 1.113 to the final rejection results in abandonment. A reply under 37 CFR 1.113 is limited to an amendment complying with 37 CFR 1.116; a Notice of Appeal (and appeal fee); or (C) a request for continued examination (RCE) filed under 37 CFR 1.114 with a submission (i.e., an amendment that meets the reply requirement of 37 CFR 1.111) and the fee set forth in 37 CFR 1.17(e).

Petitioners herein failed to timely submit a proper reply to the final rejection. Accordingly, withdrawal of the holding of abandonment would not be appropriate.

#### **ALTERNATE VENUE**

Petitioners are strongly urged to consider filing a petition stating that the delay was unintentional. Petitioners' attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this matter may be directed to  
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